IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 929 of 2004
with
SPECIAL CIVIL APPLICATION No 946 of 2004
and
SPECIAL CIVIL APPLICATION No 951 of 2004

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VANITA COLD STORAGE & ANOTHER
Versus
SALES TAX OFFICER, CLASS-I

Appearance:
1. Special Civil Application No. 929 of 2004
MR RM CHHAYA for the Petitioners
MR SN SHELAT, ADV.GENERAL with MS MAITHILI MEHTA, AGP for the Respondent

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 18/02/2005

COMMON ORAL JUDGEMENT

(Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

The petitioners in this group of petitions preferred under Article 226 of the Constitution of India challenge the action of the respondent - Sales Tax Officer in demanding sales tax under the Gujarat Sales-tax Act, 1969 (hereinafter referred to as "the Act") on sale of "DEPB" (Duty Entitlement Pass Book).

The claim of the petitioners is that the said DEPB cannot be said to be the 'goods' on sale of which the petitioners shall be liable to pay the Sales tax. In the alternative it is claimed that it is an 'actionable claim' sale of which is exempt from the payment of Sales tax under the Act.

It is not in dispute that the petitioners do have efficacious statutory remedy under the Act. We are also of the view that the matters do not involve pure question of law as contended by Mr.Chhaya. The matters at issue do involve questions of facts as well. We are, therefore, of the opinion that this Court should not exercise its discretionary jurisdiction under Article 226 of the Constitution. The petitioners shall avail of the statutory remedy under the Act.

For the aforesaid reasons the petitions are dismissed. Rule nisi issued in each petition is discharged. The parties shall bear their own cost.

Registry shall maintain copy of this order in each petition.

(Ms. R.M.Doshit, J.)

(S.R.Brahmbhatt, J.)

/sakkaf